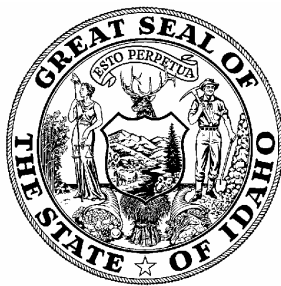


STATE OF IDAHO



DIVISION OF PURCHASING

INTRODUCTION TO

IDAHO

PUBLIC PURCHASING

An Employee Guide to Understanding
State of Idaho Purchasing

C.L. 'Butch' Otter, Governor

Department of Administration
Mike Gwartney, Director

P.O. Box 83720
Boise, Idaho 83720-0075
(208) 327-7465
FAX (208) 327-7320

www.adm.idaho.gov

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Introduction to
IDAHO PUBLIC PURCHASING
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1. INTRODUCTION

1.1 Purpose

The purpose of this guide is to acquaint state employees with the statutes, rules, and processes that govern public purchasing in Idaho. Understanding these processes will help you to appreciate your responsibilities as a public employee, increase cooperation between state agencies and build stronger relationships with the vendor community.

Public purchasing is an evolutionary process and state purchasing can be called a laboratory where new ideas and different approaches are tested and refined. Some of the biggest challenges facing state government are the conservation of resources and cost containment while procuring high-technology products and services, professional services, environmentally sensitive products and services, privatization of public functions, and the financing and administration of programs previously handled by the federal government. This variety of purchasing activity demands well-thought-out policies and continuing improvement and refinement of purchasing techniques. Your suggestions for improvement and cooperation are solicited and always welcomed.

1.2 Idaho Purchasing History

The growth of public purchasing was influenced by the procurement experience of both World Wars, which identified shortcomings in government acquisition programs. The federal establishment and most state's central procurement programs started because of the impetus of World War I. Most state procurement laws date from the 1920s. In the west, Idaho and California were the first to adopt a centralized purchasing plan with Oregon, Washington, Montana, and Utah following closely behind.

The 1919 Idaho Session Laws established the Bureau of Supplies under the Department of Public Works and provided for the appointment of a purchasing agent. The preamble of chapter 128 reads as follows: "The purpose of this act is to secure the orderly and economical administration of the business affairs of the various state departments and institutions, publicity and fairness in awarding contracts for all supplies, and in keeping of accurate cost accounts." In addition to purchasing for state departments, the Bureau of Supplies also purchased supplies for the Department of Public Welfare's Sanitariums and cooperated with the State Board of Education to purchase supplies and develop contracts for the educational institutions.

In 1925-26 some of the largest purchases included 32,000 tons of coal and 25,000 pounds of evaporated prunes. State contracts were established for carbon paper at \$1.00 a box and typewriter ribbons at \$4.17 per dozen, 50% of regular retail price. To promote business with state suppliers, a 5% differential was given to Idaho bidders.

In 1927 the Office of the State Purchasing Agent was created and all powers of the former Bureau of Supplies were transferred to that office. The purchasing agent now reported directly to the Governor rather than to the Department of Public Works.

In 1939 the duties and procedures for the Office of the State Purchasing Agent were expanded and defined in greater detail and an Advisory Board, consisting of the Governor and two legislators, was created to directly oversee the operations of the purchasing agent.

1974 saw the creation of the present day Division of Purchasing under the Department of Administration and the further defining of authority and responsibilities. The Division of Purchasing currently consists of Purchasing, Federal Surplus Property, Postal Services, the Copy Center, and the State Records Center.

In 2000 a Purchasing Modernization Task Force recommended several updates to Idaho Purchasing Code. In 2001, changes to legislation and purchasing rules simplified purchasing procedures, allowed for Internet bidding, reverse auctions, and increased delegated authority to agencies.

In the past few years personal computers, voice mail, e-mail, Internet access, electronic commerce, and automation of purchasing systems have changed the face of public purchasing. Who can say what the future holds? Whatever it is, someone will need to buy it. One thing is sure, sound public purchasing by responsible government employees will be required for a long time to come.

2. UNDERSTANDING PUBLIC PURCHASING

2.1 Definition of Public Purchasing

Public Purchasing is defined as the purchasing or procurement of an item or service of the proper utility, that meets the needs of the jurisdiction, at the best price, from the most responsive and responsible vendor.

Purchasing (commodities) and procurement (services) encompass the entire process for obtaining goods and services, including all activities from planning, preparation and processing of a requisition, through source selection, solicitation, evaluation, award and contract formation, to receipt and acceptance of delivery, payment and property disposition.

Please note that all references to purchasing, procurement, rules, and contracts herein relate to activities administered by the Division of Purchasing and not to activities administered by the Division of Public Works (construction and building projects). Even though the Division of Public Works operates under similar statutes and rules, they have different

purchasing authorities, rules for vendors, etc. For information regarding public works projects contact the Division of Public Works at 208-332-1900.

2.2 Why Centralized Purchasing?

Why is there a Division of Purchasing? Certainly combined volume purchasing for better pricing is a prime consideration. However, bigger is not always better and there are valid arguments for local purchasing by agencies. The Division of Purchasing recognizes this fact and has delegated levels of purchasing authority to many agencies. Where volume purchasing is desirable and reduced costs are significant, the Division of Purchasing develops and implements statewide contracts. To assure compliance to state statutes, the Division of Purchasing processes or oversees large dollar purchases.

The *primary* functions of the Division of Purchasing are purchasing management, thoughtful policy implementation, adequate training, monitoring of purchases in accordance with state statutes, and the conservation of the taxpayer's dollars. To be effective, the Division of Purchasing strives to reduce the cost of government, inspire public confidence in government, improve the quality and timeliness of services rendered by agencies, provide a meaningful partnership with the business community, and promote honesty and integrity throughout government operations. The centralized purchasing process becomes much more than a technical, clerical exercise. It is a *managerial* function that crosses agency lines, with a primary mandate to conserve public funds.

Mission Statement of the Division of Purchasing:

To purchase goods and services by securing maximum value for the tax dollar and to provide service to state agencies and the public in a timely and courteous manner through ethical and impartial relations with vendors and state personnel.

2.3 Purchasing Rules

The Division of Purchasing has promulgated rules (IDAPA 38.05.01) based on state statutes to govern the purchase or procurement of property and services. The complete rules may be viewed or printed from the purchasing web site.

2.4 State Statutes

The Idaho Statutes that govern purchasing activity are found in *Idaho Code, Title 67 State Government and State Affairs, Chapter 57, Department of Administration*, specifically 67-5714 through 67-5745C. These may be accessed via the Internet through the Idaho purchasing web site or in hard copy published in *Idaho Code, Volume 11*.

<u>67-5714</u>	DIVISION OF PURCHASING created (1974)
<u>67-5715</u>	PURPOSE OF ACT - establishes competitive bidding
<u>67-5716</u>	DEFINITION OF TERMS

<u>67-5717</u>	POWERS AND DUTIES OF THE ADMINISTRATION OF THE DIVISION OF PURCHASING -gives the Administrator authority to make rules and regulations, to purchase items and make contracts
<u>67-5718</u>	REQUISITIONS FOR PROPERTY -- NOTICE -- FORM -- GUARANTEE -- PROCEDURE FOR BIDDING -establishes use of requisitions, bids, small business opportunities, preference to local manufacture, electronic bidding
<u>67-5718A</u>	ACQUISITION OF PROPERTY BY CONTRACT -- AWARD TO MORE THAN ONE BIDDER -- STANDARDS FOR MULTIPLE AWARDS -- APPROVAL BY ADMINISTRATOR -allows multiple contract awards
<u>67-5719</u>	STATEMENT OF SUPPLIES ON HAND – ESTIMATED REQUIREMENTS – INSPECTIONS AND INVENTORIES
<u>67-5720</u>	ACQUISITION IN OPEN MARKET -- EMERGENCY PURCHASES - allows for educational discounts, reverse public auctions, and emergency purchases
<u>67-5721</u>	ACQUISITION OF NONOWNED PROPERTY -- OPTION TO ACQUIRE -- DETERMINATION OF OPTION COSTS
<u>67-5722</u>	SALE, TRADE-IN OR EXCHANGE OF STATE PERSONAL PROPERTY
<u>67-5723</u>	DISCOUNTS -- NEGOTIATIONS FOR REQUIRED RULES, REGULATIONS AND PROCEDURES
<u>67-5724</u>	CONTRACTS WITH FEDERAL GOVERNMENT OR ITS AGENCIES EXEMPT FROM CERTAIN PROVISIONS
<u>67-5724A</u>	ACQUISITION OF PROPERTY -- GENERAL SERVICES ADMINISTRATION FEDERAL SUPPLY SCHEDULE CONTRACTS
<u>67-5725</u>	PRESERVATION OF RECORDS -- WRITTEN CONTRACTS -- VOID CONTRACTS
<u>67-5726</u>	PROHIBITIONS - transfer of contracts - influencing the award of contracts - failure to use open (statewide) contracts
<u>67-5727</u>	MAINTENANCE OF STOCKS -- REQUISITIONS FROM STOCKS -- PAYMENT
<u>67-5727A</u>	PARTICIPATION IN GROUP DISCOUNT PURCHASING
<u>67-5729</u>	APPLICATION OF ADMINISTRATIVE PROCEDURE ACT
<u>67-5730</u>	QUALIFICATION OF VENDORS – DISQUALIFICATION OF VENDORS – NOTICE -- APPEALS
<u>67-5732</u>	RULES - authority of administrator to promulgate rules
<u>67-5732A</u>	SALE OF SURPLUS PROPERTY AUTHORIZED
<u>67-5732B</u>	GOVERNOR’S HOUSING COMMITTEE PERSONAL PROPERTY EXEMPT FROM ACT

<u>67-5733</u>	DIVISION OF PURCHASING – APPEALS
	- outlines vendor’s right of appeals and processes to follow
<u>67-5734</u>	PENALTIES
	- relating to violation of 67-5726
<u>67-5735</u>	PROCESSING -- REIMBURSEMENT OF CONTRACTOR
	- Paying bills
<u>67-5736</u>	ACCEPTANCE
	-property ordered must meet specifications
<u>67-5737</u>	PROVISIONS OF THIS CHAPTER CONTROLLING --
	SEVERABILITY
<u>67-5740</u>	ADDITIONAL AUTHORITY AND DUTIES OF THE
	ADMINISTRATOR OF THE DIVISION OF PURCHASING
	- Federal Surplus Property
<u>67-5741</u>	DELEGATION OF DUTIES -- BONDING OF AGENCY
	PERSONNEL
	- delegation of purchasing authority
<u>67-5742</u>	DELEGATION OF AUTHORITY TO ACQUIRE SURPLUS
	PROPERTY
<u>67-5743</u>	TRANSFER CHARGES
<u>67-5744</u>	SURPLUS PROPERTY FUND MAINTAINED -- CHARGES
	AND FEES, DEPOSITION
<u>67-5745</u>	DECLARATION OF PURPOSE
	- information technology and telecommunications
<u>67-5745A</u>	DEFINITIONS
	- information technology and telecommunications
<u>67-5745B</u>	INFORMATION TECHNOLOGY RESOURCE MANAGEMENT
	COUNCIL -- COMPOSITION -- APPOINTMENT AND TERM
	OF OFFICE -- REIMBURSEMENT -- CONTRACTING FOR
	NECESSARY SERVICES
<u>67-5745C</u>	GENERAL POWERS AND DUTIES OF THE COUNCIL

3. HOW THE SYSTEM WORKS

3.1 The Acquisition Process

The acquisition process includes all activities from planning, preparation and processing of a requisition, solicitation, evaluation, award and contract formation, to receipt and acceptance of delivery, payment, inventory tracking and property disposal. Regardless of whether the product or service required is processed by the agency under delegated authority or sent to the Division of Purchasing for processing, the workflow is essentially the same. Let’s examine a few things that need to be considered when making any purchase:

- Identify the need and product or services that will best fulfill that need. Keeping in mind cost containment, what is the product or service that best fulfills the job requirements?
- Development of specifications that describe the characteristics of a product or service being sought. Consideration should be given to suitability and to overall cost effectiveness in addition to acceptability and initial price. Specifications, by their nature, set limits and thereby eliminate or restrict items that are outside the boundaries drawn. Specifications should be written to encourage, not discourage, competition consistent with seeking overall economy for the purpose intended. The goal is to invite maximum reasonable competition. For a detailed discussion on specifications see the publication *Guidelines for Writing Effective Specifications* available on the Idaho purchasing web site. Here are a few different types of specifications:
 - Standard - developed for repeated use
 - Non-standard - developed for one time use
 - Custom-made or custom-built
 - Ready-made or off-the-shelf
 - Brand name or equal
 - Detailed design-type
 - Functional or Performance-type
 - Qualified-product list or approved brands
- Bidding or seeking price quotations from a number of possible suppliers as per the rules established by the Division of Purchasing and your agency.
- Reviewing the bids or offers to determine overall economy for the intended use of the product or scope of the services. The award should always go to the lowest responsive bidder who meets the specifications of the product or services you requested.
- Purchasing or contracting for the product or service in accordance with the rules of the Division of Purchasing and your agency.
- Receiving the product or service and verifying that it meets the requirements of the purchase order or contract.
- Processing the invoice through appropriate channels in a timely manner. Refer to *Chapter 4, Your Responsibilities*.
- Adding the item to the inventory system if necessary. Idaho Code 67-5746 requires that all agencies maintain an inventory of all personal property that

an agency owns or is responsible for. Contact the responsible personnel within your agency for more information.

- Disposal of item at the end of its usable lifespan or after it has been declared surplus property. Detailed instructions for surplus property disposal are published by the State Board of Examiners. Contact the responsible personnel in your agency for more information.
- Keeping good records that detail all of the above considerations as required by Idaho Code and your agency. Public purchasing requires that most records be made available for public inspection upon request, so good detailed recordkeeping is essential.

3.2 Delegated Authority

Idaho Code 67-5717 charges the Administrator of the Division of Purchasing with the responsibility to purchase all state property and enter into contracts, leases, and rentals. The Administrator has the authority to delegate responsibility to others. For minor property costing less than \$5,000 all agencies have been granted authority to purchase such property without competitive solicitations, in accordance with good business practices and in the best interests of the state. For purchase of property and services exceeding \$5,000, the Administrator has granted limited delegated purchasing authority in various amounts to agencies who demonstrate a need for such purchases and a competence for accomplishing the purchase according to state statutes and published purchasing rules and regulations.

3.3 Types of Purchasing

Acquisition of property and procurement of services is divided into three major types:

1. Small Purchases and Delegated Authority (open market and quotes)
2. Large Purchases (formal bids and proposals)
3. State Contracts

Let's begin our examination of these three types by examining the basic rules of the Division of Purchasing.

3.4 Division of Purchasing Rules (IDAPA 38.05.01)

As required by state statute, the Division of Purchasing has developed rules to govern the purchase or procurement of property and services. The following is a summary of purchasing dollar limits. State agencies that have delegated authority also have purchasing procedures that follow the guidelines of the Division of Purchasing. Individual agencies may have more restrictive limits in place that will govern your purchasing activity, please contact your purchasing office or designated personnel in your agency for details and purchasing authority.

3.4.1 Small Purchases of Property or Services

Less Than \$5,000 For purchases expected to cost less than \$5,000, and not available on statewide contracts, no competitive bidding is required. Agencies may purchase such property as they see fit, in accordance with good business practice and in the best interests of the state.

All agencies have authority to make purchases under \$5,000.

More Than \$5,000 -
Less Than \$50,000 Purchases over \$5,000 and under \$50,000 (*or your delegated purchasing authority*) not available on statewide contracts, require a minimum of three (3) competitive solicitations from vendors with a significant Idaho economic presence as defined by Idaho Code.

3.4.2 Larger Purchases of Property or Services

More Than \$50,000 Purchases over \$50,000 are formal bids and are handled by the Division of Purchasing or agencies with special delegated authority.

3.4.3 Professional and Consultant Services

Less Than \$50,000 Services of professionals or consultants, as defined in the Division of Purchasing Rules, costing less than \$50,000 and not exceeding one (1) year may be acquired by agencies without competitive bidding in accordance with good business practice and in the best interests of the state.

More Than \$50,000 Services of professionals or consultants exceeding \$50,000 and/or exceeding one (1) year are handled by the Division of Purchasing.

Professional Services are defined as work rendered by an independent contractor whose occupation is the rendering of such services and who has a professional knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, including but not limited to accounting and auditing, legal, medical, nursing, education, engineering, actuarial, architecture, veterinarian, and research. The knowledge is founded upon prolonged and specialized intellectual training that enables a particular service to be rendered. The word “professional” implies professed attainments in special knowledge as distinguished from mere skills.

Consultant Services are defined as work rendered by either individuals or firms who possess specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis or advice in formulating or implementing programs or services or improvements in programs or services, including but not limited to such areas as management, personnel, finance, accounting, and planning. The consultant's services, opinions or recommendations will be performed according to the consultant's methods without being subject to the control of the agency except as to the result of the work.

3.4.4 Information Technology

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for IT Services</u></td><td>Information Technology services less than \$50,000 acquired through a service contract not exceeding one year may be acquired as the agency sees fit.</td></tr><tr><td style="padding-right: 20px;"><u>More Than \$50,000</u></td><td>Information Technology Services exceeding \$50,000 and/or exceeding one (1) year are subject to competitive bidding and are handled by the Division of Purchasing or by agencies with special delegated authority.</td></tr></table> | <u>Less Than \$50,000
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NOTE: Keep in mind that all IT purchases require approval from authorized persons within your agency in accordance with the guidelines and policies of the Information Technology Resource Management Council (ITRMC). Large projects require the approval of ITRMC.

The Information Technology Resource Management Council was established in 1996 to provide a centralized and coordinated strategic planning process involving the expertise and participation of experienced persons from both state and local government and the private sector.

ITRMC reviews and evaluates the information technology and telecommunications systems presently in use by state agencies, recommends and establishes statewide policies, and prepares statewide short and long-range IT and Telecommunications Plans. Within the context of those plans, the ITRMC establishes statewide IT and telecommunications standards, guidelines, and conventions assuring uniformity and compatibility of state agency systems. The ITRMC follows the philosophy of local control and central coordination, and has statutory authority.

The Division of Purchasing has an Information Technology Purchasing Officer on staff to assist agencies with information technology issues and purchases.

3.4.5 Statewide and Single Agency Contracts

Purchases from contracts do not require any further bidding and do not have a dollar limitation unless specially mentioned in the contract. The bidding was already done during the contract formulation. Contracts may be statewide for all agencies, or restricted to an identified agency(s).

Many contracts contain a “public agency clause” which allows for cities, counties, and political subdivisions of the state (school districts, highway districts, etc.) to access the contracts.

3.4.6 Leases and Time Purchase Contracts

Leases are subject to the same competitive solicitation requirements for small or large purchases listed above. Leases for periods exceeding one (1) year specifically require the approval of the Division of Purchasing.

Time purchases or installment payments generally require the approval of the Division of Purchasing and the Division of Financial Management.

3.4.7 Emergency Purchases

Emergencies are situations that create a threat to public health, welfare or safety such as floods, epidemics, riots, equipment failures or other similar circumstances.

The Division of Purchasing, after determining that an emergency exists, may authorize the purchase of property or services by any reasonable means, with any available specification, without regard to rules. For a definition of “emergency” see *Chapter 5, Frequently Asked Questions*.

3.4.8 Exceptions to Delegated Authority

Requests for lease or purchase of telephone systems and vehicles are processed by the Division of Purchasing.

3.4.9 Other Exceptions to Bidding

Purchases from sole sources, the federal government, rehabilitation agencies, Idaho Correctional Industries, emergency purchases, purchases less than the bid limits described above, statewide or single agency contracts, or other purchases exempted by policy directive. In most instances the Division of Purchasing reserves the authority to determine if an item or service meets the qualifications to be considered as exempt from bidding.

Policy Directive No. 01-1 - Raises the no bid limit to \$50,000 for state employee education, training, and related expenses.

Policy Directive No. 01-2 - Exempts purchases of vaccines from Center for Disease Control contracts from competitive bidding. Used by public health agencies only.

Policy Directive No. 01-3 - Exempts legal advertising, public service announcements, and purchase of copyrighted materials primarily available from the publisher from competitive bidding.

Policy Directive No. 03-1 – Exempts certain purchases where special educational discounts are offered by vendors exclusively to schools, colleges, universities, and other educational agencies where the property is for the express purpose of educating students. Such purchases are limited to under \$50,000 without written approval from the Division of Purchasing.

3.5 Contracts, Price Agreements, Leases

A contract is a written agreement for the acquisition of property or services that defines the relationship and duties and obligations of the parties to it. Most commonly the term is used to describe term contracts, definite or indefinite quantity/indefinite delivery contracts, or other acquisition agreements whose subject matter involves multiple payments and deliveries. Contracts include a description of the item or service solicited, terms and conditions, amendments, the vendor's signed bid or proposal and the signed document by the purchasing official indicating acceptance.

The Division of Purchasing creates statewide contracts, local agency contracts, lease contracts and price agreements. Agencies with delegated purchasing authority may create their own contracts within limited conditions and dollar thresholds.

3.5.1 Statewide Contracts

Statewide or Open Contracts are for items or services that are used by the majority of state agencies. They include such items as paper and plastics (hand towels, toilet tissue, plastic trash can liners), car batteries, office supplies, envelopes, business cards, tires, paint, photocopiers, vehicles and information technology (computers, telephones). Statewide contracts are available on the Idaho purchasing web site.

How do we determine what goes on a statewide contract? There are four major considerations:

- Is it a product or service used by all or many state agencies?
- Is the product or service universally available and biddable?
- Will the combining of usage from all agencies on a contract result in savings to the state?
- Is there a method available for delivery or distribution?

Most statewide contracts are *mandatory use*, meaning that they must be used by agencies purchasing the specific product or service. *Idaho Code 67-5726 Prohibitions* says, in part: “No officer or employee shall fail to utilize an open contract without justifiable cause for such action.” For more information see *Chapter 5, Frequently Asked Questions*. Some statewide contracts are optional use and others have conditions such as delivery areas and minimum quantities that enable the agency to decline participation in the contract when necessary. Most statewide contracts also have a public agency clause that allows cities and political subdivisions of the state (school districts, counties, highway districts, etc.) to access the contract.

3.5.2 Single Agency Contracts

These types of contracts are generally for the exclusive use of an individual agency, although they may also have a public agency clause. A few examples are road salt for the Department of Transportation, inmate clothing for the Department of Correction and dairy products for the Department of Health and Welfare state hospitals. Contracts that exceed the agency’s delegated purchasing authority or exceeding one (1) year are processed by the Division of Purchasing.

3.5.3 Price Agreements

A price agreement is another method of contracting with a vendor for products or services authorized by the Division of Purchasing. Price agreements are non-exclusive (not mandatory use) written agreements between a vendor and an individual agency or group of agencies specifying a product or list of products or services offered at an agreed upon price or discount. They are not competitively bid. Such agreements are appropriate when:

- The dollar amount of items or transactions is relatively small;
- The property may not be conducive to standard competitive bidding procedures;

- There exists a need to establish multiple agreements with vendors supplying property that is similar in nature or function, but is represented by different manufacturers and/or needed in multiple locations; and
- Non-exclusive agreements for periods not exceeding two years are deemed necessary to establish consistent general business terms such as price, use of catalogs, delivery terms, credit terms, etc.

Examples of price agreements are equipment replacement parts for the Department of Transportation, aircraft rental for the Department of Fish and Game, and personal clothing and small household items for Department of Health and Welfare state hospital clients. The Division of Purchasing also establishes price agreements for use by all agencies such as auto rentals and court reporters.

3.5.4 Leases

A lease is a contract for the use of property under which title to the property does not pass to the state agency and the time period is one year or more. Individual agencies may enter into leases subject to the same requirements of competition that govern the purchase of property and for of one (1) year or less. All leases *exceeding one year* or *exceeding the agency's delegated authority* are processed by the Division of Purchasing. The Division of Purchasing currently has lease contracts for photocopiers, facsimile machines, vehicles, and information technology equipment.

3.5.5 Other Contracts

The Division of Purchasing also may enter into contracts for installment payments or time purchases. Contact your agency purchasing personnel or the Division of Purchasing for more information on these types of contracts.

4. YOUR RESPONSIBILITIES

4.1 Integrity, Ethics, Vendor Relationships

All state employees are involved in business transacted by government in one form or another. Especially so are those professional purchasers and other agency personnel who purchase items and services. Taxpayers, state agencies, bidders, contractors and others involved in the conduct of state business have a stake in the integrity and ethical performance of state employees. The State of Idaho has extensive statutes and purchasing rules referenced in this publication. These are safeguards put in place to preserve that integrity by helping to avoid improper actions, or the appearance of improper actions by government personnel and by suppliers. The following are a few of the safeguards and prohibitions that protect you as a taxpayer and a government employee:

- Public Information Availability - complete purchasing records and published rules and procedures, with public access (I.C. 9-338, I.C. 67-5725)
- Conflict of Interest prohibition regarding the holding of contracts or selling to the state property or supplies by state employees (I.C. 67-5726)
- Prohibition regarding the influencing or conspiring to influence public purchasing decisions and contract awards (I.C. 67-5726). Attempts at influence may include kickbacks and bribes, peddling or payment of a fee, back-door selling, hard-sell tactics, fraternization, or offering gifts to avoid following published procedures or gain advantages
- Circumventing Purchasing Authorization Prohibition that prohibits efforts by using agencies to obtain products or services by avoiding the competitive process such as splitting purchases, creating false emergency situations and non-use of statewide contracts (I.C. 67-5726, I.C. 67-5717)
- Appeals and Resolution of Complaints Processes- published procedures for resolving disputes (I.C. 67-5733)
- Legislative and Internal Audits - periodic and systematic reviews of purchasing procedures for compliance with state statutes, policies and rules that govern the purchasing process

Each state employee, classified and nonclassified, has a *personal responsibility* to conduct government business in an ethical manner and assure the integrity of the state purchasing and procurement processes.

4.2 Code of Ethics

Responsibility to your employer

- Follow the lawful instructions or laws of the employer.
- Understand the authority granted by the employer.
- Avoid activities that would compromise or give the perception of compromising the best interests of the employer.
- Reduce the potential for any charges of preferential treatment by actively promoting the concept of competition.
- As agents for the employer, obtain the maximum benefit for funds spent.

Conflict of Interest

- Avoid any private or professional activity that would create a conflict between your personal interest and the interests of your employer.

Perception

- Avoid the appearance of unethical or compromising practices in relationships, actions and communications.
- Avoid noticeable displays of affection that may give an impression of impropriety.
- Avoid holding business meetings with suppliers outside the office. When such meetings do occur, the meeting location should be carefully chosen so as not to be perceived as inappropriate by other persons in the business community or by your peers.

Gratuities

- Never solicit or accept money, loans, credits or prejudicial discounts, gifts, entertainment, favors or services from your present or potential suppliers, which might influence or appear to influence purchasing decisions.

4.3 Vendor Relationships

Developing and maintaining good relationships with our suppliers is important. Whenever a vendor (or agency) fails to meet the requirements of a contract or purchase order the problem needs to be discussed and resolved to everyone's satisfaction. This will help prevent future problems and maintain good working relations. Most minor problems can be worked out with a simple call or visit, but if not, please feel free to bring the matter to the attention of the Division of Purchasing for assistance in resolving disputes. The following are a few things to keep in mind when dealing with vendors:

- Maintain and practice, to the highest degree possible, business ethics, professional courtesy, and competence in all transactions.
- Preclude from showing favoritism or being influenced by suppliers through the acceptance of gifts, gratuities, loans or favors.
- Adhere to and protect the supplier's business and legal rights to confidentiality for trade secrets, and other proprietary information.

4.4 Processing Invoices

The internal procedures that government goes through to process payments to vendors can be quite confusing and time consuming. Although technology is constantly showing us better and faster ways to do business with such things as e-mails, faxes, internet access and electronic fund transfers, the human element still comes into play. It is our individual responsibility as government employees to do whatever we can to process vendor invoices in a timely manner.

- *Idaho Code 67-5735* states, in part, that "Within ten (10) days after the property is acquired.....the acquiring agency shall complete all processing...to permit the

contractor to be reimbursed. Within ten (10) days of receipt of the document...the State Auditor shall cause a warrant to be issued....”.

4.5 Purchasing Cards

Many agencies are now using the State of Idaho Purchasing Card for small purchases and travel. The P-Card is the official State of Idaho credit card. It is a MasterCard issued by Wells Fargo Bank and works just like a personal credit card with universal acceptance. If you would like more information on the P-Card see *Chapter 5, Frequently Asked Questions*, “What is a P-Card?” or call the Division of Purchasing.

5. FREQUENTLY ASKED QUESTIONS

Why do we need to get so many bids?

Competition in purchasing may be defined as equal opportunity to qualified vendors to compete for government business by vying against each other to offer the best prices, quality or service. Competition is the central principal of public procurement. In its purest form, competition ensures a free, open and healthy economy. When competition is available but is artificially restricted, the principles of public procurement are defeated.

In government purchasing, commodities and services are direct costs to the taxpayer, so state employees purchase under public scrutiny and in accordance with policies that take advantage of the benefits of competition. The rules and regulations listed in this guide for competitive solicitations are intended to secure sound value, to guard against favoritism and profiteering at public expense, and to promote the interest of private enterprise and the health of local economies by providing equal opportunities to compete for government business.

Even though no bidding is required for purchases under \$5,000, competitive “shopping around” for the best buy is always encouraged and in the best interests of the state. For those agencies with delegated authority over \$5,000, insofar as it is practical and possible, a *minimum* of three (3) solicitations from vendors having a significant Idaho presence is required. There is no *maximum* number of bids. The intent is adequate competition. Adequate competition requires seeking responses from qualified suppliers consistent with the size and nature of the intended purchase and continually searching for new qualified vendors. Be aware that markets change, firms come and go, and new and better products and services are constantly being created. Soliciting adequate and reasonable competition should be the rule and tends to afford the best practice, even for modest purchases.

Fostering competition is more a matter of attitude than a procedure. This attitude reflects itself in searching for new sources of supply, in attempting to make solicitations simple and inviting, and in contacts and communications with vendors and contractors. Good vendor

relationships are a necessity, but care should be taken to not conduct a relationship in a way that would impair impartiality, hinder the fostering of competition or constitute a conflict of interest.

What is “Significant Idaho Economic Presence”?

For items costing over \$5,000 bids are solicited from a minimum of three (3) vendors having a significant Idaho economic presence as defined in Idaho Code. This means the bidder must have, for a minimum of one (1) year prior to the bid, maintained in Idaho fully staffed offices, or fully staffed sales offices or divisions, or fully staffed sales outlets, or manufacturing facilities, or warehouses or other necessary related property. Further, if the bidder is a corporation, it must be registered with the office of the Secretary of State and licensed to do business in the State of Idaho.

What constitutes an emergency purchase?

Idaho Code 67-5720 and IDAPA 38.05.01.043 defines an emergency as: “An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or such other similar circumstances. The existence of such a condition must create an immediate and serious need for property that cannot be met through normal acquisition methods.”

To request an emergency purchase, the agency must submit a written request to the Division of Purchasing stating the nature of the emergency, the product or service required, the basis for the selection, and the supplier. The Division of Purchasing will review the request, determine if an emergency exists, give purchase approval or make appropriate emergency purchases. Some agencies have delegated emergency purchasing authority with a dollar threshold.

What is a “Sole Source” item?

A sole source item is described as an item with *only a single supplier*. Sole source items are exempt from the formal bidding process. Many times agencies send requests for sole source purchases that describe an item made only by one manufacturer, however the item is distributed and readily available from many different suppliers, so it does not qualify for sole source. It has a sole manufacturer, but not a sole supplier. As long as there is more than one potential bidder or offeror for the property item there is no justification for a sole source determination.

Examples of circumstances which could necessitate a sole source purchase are:

- Where the compatibility of equipment, components, accessories, computer software, replacement parts or service is the paramount consideration.
- Where a sole supplier’s item is needed for trial use or testing.

- Purchase of mass produced movie or video film or written publications distributed or sold primarily by the publisher.
- Purchase of property for which it is determined there is no functional equivalent.

All requests for sole source must be submitted in writing to the Division of Purchasing with justification for such action. The Division of Purchasing shall determine the validity of sole source purchase requests.

Why do I have to buy from State Contracts when I can get items cheaper from other vendors? With limited budgets, shouldn't I save money wherever possible?

Saving money is always a prime consideration when making a purchase. All state employees, and especially those charged with the responsibility for purchasing, are expected to secure maximum value for the tax dollar and conserve public funds. Statewide contracts are developed and competitively bid with those same goals in mind and generally offer quality products and services at fair prices.

It's important to remember that statewide contracts are developed with much more than just lowest cost in mind. They also include value-added services such as prompt delivery, extensive reports and other services that benefit all state agencies. The competitive bidding process affords all interested vendors an opportunity to participate in state business and the contracts that result from such processes are legal binding documents that the state and the vendor must adhere to. Purchasing off-contract without justifiable cause subverts the bidding process, discredits the state in the eyes of vendors and potentially violates state statute.

- *Idaho Code 67-5726* says, in part: “...No officer or employee shall fail to utilize an open contract without justifiable cause for such action...”
- *Idaho Code 67-5717* says, in part: “...Unless an acquiring agency can show a substantial difference between the required capabilities and the capabilities provided by such property available on open contract, all agencies must utilize such property available on such contracts...”

It seems you can always find less expensive items if you “shop around” long enough. But, when you are trying to justify an off-contract purchase just because it costs less, be sure you consider the **true cost** of the “cheaper” item. In other words, how much time did you spend “shopping around” and how much does that add to the cost? What about delivery or pickup costs? How much time, effort and money are really spent “shopping around”? Be sure to also ask yourself “Are the items being compared really the same, the same quality, the same quantity, etc.?” Many times contract specifications require a certain quality of product, as well as a good price.

Do I ALWAYS have to buy from State Contracts?

No, not always. If the particular item that you require is not on a statewide contract, you are not forced to change your requirements in order to purchase items that are on contract. You should, however, closely examine your needs and determine if an item on contract will meet your requirements. If you elect to not purchase an item on state contract you should have good, justifiable reasons why the contract item will not work for your operation.

- *Idaho Code 67-5717* says, in part: “...Unless an acquiring agency can show a substantial difference between the required capabilities and the capabilities provided by such property available on open contract, all agencies must utilize such property available on such contracts...”

Many statewide contracts have provisions in them that allow you to purchase from other sources. Obviously it's not economically feasible to expect you to drive many miles or wait several days for delivery of a small cost item that is available locally. So, some contracts have minimum order quantities, minimum dollar amounts or restricted delivery areas that keep the contract cost effective for both the vendor and your agency. If your need doesn't meet these minimums, you do not have to use the contract. *On the other hand, some contracts do not have minimum orders or quantities and the vendors will ship anywhere with overnight delivery at no additional cost.* Each contract needs to be read carefully before making such decisions. Please contact your agency purchasing personnel or the Division of Purchasing with any questions regarding the use of statewide contracts.

What is the Idaho Reciprocal Preference Law and how does it apply to purchasing?

Some states and countries provide a preference for vendors within their borders and add a percentage to bids received from outside states. Where that happens, the State of Idaho responds (reciprocates) in like manner by adding the same percentage to bids received from vendors who are “domiciled” in those states or countries. This applies to the purchases of materials, supplies, equipment, or services.

This law (Idaho Code 67-2349) applies to any department, division, bureau or agency thereof, city, county, school district, irrigation district, drainage district, sewer district, highway district, good road district, fire district, flood district, or other public body that solicits competitive bids.

How does it affect purchasing?

The law is applicable to **any purchase that is bid, regardless of the dollar amount**, and is not limited to the United States.

It is *not* applicable to purchases that are *not* competitively bid, such as:

- ◆ small purchases under \$5,000 that are not competitively bid....however, if small purchases are bid, ***regardless of the dollar amount***, then the reciprocal law takes effect

- ◆ sole source purchases
- ◆ emergency purchases
- ◆ other purchases that are exempt from bidding (Rehabilitation Agencies, Correctional Industries, The Federal Government, Professional, Consultant Services and Information Technology Services under \$50,000, Statewide and Agency Contracts and Price Agreements, Training Travel, Lodging, Seminars, and Meeting Rooms under \$50,000, and any other purchase that may be exempted from bidding by the Division of Purchasing by written policy.

How is it applied to bids?

In determining the lowest responsible bidder, a percentage increase should be added to each out-of-state bidder's bid price, which is equal to the percent of preference given to local bidders in the bidder's home state. That is, if the low bidder is from a state that grants a 10 percent preference to its own in-state bidders, the Idaho agency must add 10 percent to that bidder's price when evaluating the bid. It is only applied to bid evaluations when comparing bids from Idaho domiciled vendors with bids from out-of-state vendors with a preference in their state. There is no need to apply any percentage when comparing one out-of-state bid with another out-of-state bid. In no instance will the increase (penalty percentage) actually be paid to a vendor whose bid is accepted.

Where do I find preference information on other states and countries?

Information on other states is available from the Idaho purchasing web site.

Idaho Purchasing Web Site Click on Agency Information and scroll to Laws and Rules - Reciprocal Preference Information. This is a link to the State of Oregon who maintains a list of state's preferences.

Information on Canadian Provinces preferences is also available in the State Purchasing Reference Guide or by calling the Division of Purchasing office (327-7465).

Idaho Statute 67-2349

PREFERENCE FOR IDAHO SUPPLIERS FOR PURCHASES. To the extent permitted by federal laws and regulations, whenever the State of Idaho, or any department, division, bureau or agency thereof, or any city, county, school district, irrigation district, drainage district, sewer district, highway district, good road district, fire district, flood district, or other public body, shall let for bid any contract for purchase of any materials, supplies [and services, added 7-1-98, SLC148] or equipment, the bidder domiciled outside the boundaries of Idaho shall be required, in order to be successful, to submit a bid the same percent less than the lowest bid submitted by a responsible bidder domiciled in Idaho as would be required for such an Idaho domiciled bidder to succeed over the bidder domiciled outside Idaho on a like contract being let in his domiciliary state. For the purposes of this section, any bidder domiciled outside the boundaries of the state of Idaho may be considered as an Idaho domiciled bidder, provided that there exists for a period of one (1) year preceding the date of

the bid a significant Idaho economic presence as defined herein. A significant economic presence shall consist of the following: (a) That the bidder maintain in Idaho fully staffed offices, or fully staffed sales offices or divisions, or fully staffed sales outlets, or manufacturing facilities, or warehouses or other necessary related property; and (b) If a corporation be registered and licensed to do business in the state of Idaho with the office of the secretary of state.

What is a P-Card? Why is the State using it? What are the benefits to my agency, the vendors, and the State?

The State of Idaho Purchasing Card (P-Card) is a Wells Fargo Bank MasterCard used by state agencies primarily for small purchases. It functions just like a personal credit card and can be used wherever MasterCard is accepted.

Why? - Efficiency, Reduction of Paperwork, Choice!

The purpose of the Purchasing Card Program is to streamline and simplify the requisitioning, purchasing and payment process for small dollar transactions. The Program is designed to shorten the approval process and reduce the paperwork of procurement procedures such as purchase orders, petty cash, check requests and expense reimbursements. The goals of the Program are to:

- reduce the cost of processing small dollar purchases
- receive faster delivery of required merchandise
- simplify the payment process
- provide cardholders with empowerment to choose!

Agency Benefits!

With the P-Card state employees can simply purchase where they can find the best value, no more setting up charge accounts at every store in town, having to use “store” charge cards, issuing petty cash, requesting rotary checks for mail order or internet businesses, or having to issue purchase orders for every small purchase (and hotel reservations!). That means no more piles of invoices from retailers to process, missing invoices to search for, reconciling multiple statements, and answering calls from retailers on overdue bills.

The agency gets *one* statement for payment that shows the total amount due for all cardholders. Each cardholder gets an individual statement from Wells Fargo Bank to reconcile that includes all their purchases for the month.

Vendor Benefits!

Vendors will receive payment from the bank within 48-72 hours. They won’t need to have individual accounts with every State Agency and won’t be calling agencies about overdue invoices. The timely payment and reduction of paperwork will more than offset the slight cost incurred by accepting a credit card.

Overall State Benefits!

Overall the State of Idaho will benefit by the reduction in paperwork, resulting in a reduced cost of doing business. As more agencies begin using the P-Card for more purchases, there will be fewer transactions processed through the State Controller's Office and fewer warrants issued by the State Treasurer's Office (payments to Wells Fargo Bank are all EFT). When utilized to its fullest capability, the P-Card can have a significant impact on the cost of doing business for the State!

Increased Agency Controls

Many agencies express concern about giving employees a credit card, but agencies can determine who gets a P-Card and for what purpose, and actually increase their control over purchasing activities. For example, agencies can decide the type of products or services that can be purchased and establish dollar limitations on each individual card. Cards can be customized in the following manner:

- a monthly dollar limit
- a daily dollar limit
- a "per transaction" dollar limit
- "blocked" merchant categories
(a type of merchant can be blocked such as; bars, pawn shops, golf courses, etc.)

Any combination or all of the above controls can be put in place on each individual card.

For more information on the P-Card program contact your agency fiscal or finance officer or the Division of Purchasing.